

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
USIA-06 IO-13 ACDA-07 TRSE-00 /079 W
-----073009 040239Z /64

R 031937Z AUG 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 0322
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO

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E.O. 11652: N/A
TAGS: PGOV BQG
SUBJECT: SOVIET PROTEST ON BERLIN AS A LAND OF THE FRG

REFS: (A) STATE 181704; (B) USBER 1958

1. WE HAVE OBTAINED FROM THE BUNDESTAG THE FULL TEXT OF
THE LETTER FROM GERHART BAUM, PARLIAMENTARY STATE SECRETARY IN THE
FEDERAL MINISTRY OF THE INTERIOR, WHICH
FORMED THE BASIS OF THE SOVIET PROTEST IN WASHINGTON
(REF A), LONDON AND PARIS. BAUM WAS RESPONDING TO A
WRITTEN QUESTION FROM CSU BUNDESTAG MEMBER ZIMMERMANN
CONCERNING THE LEGAL POSITION OF THE FEDERAL GOVERNMENT
ON BERLIN AS A LAND OF THE FEDERAL REPUBLIC.

2. FOLLOWING IS AN INFORMAL TRANSLATION OF THE
BAUM REPLY:

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BEGIN TEXT

BONN, JUNE 16, 1977

TO THE MEMBER OF THE GERMAN BUNDESTAG

DR. FRIEDRICH ZIMMERMANN

BUNDESHAUS
5300 BONN

SUBJ: YOUR WRITTEN QUESTION NR. 15 FOR THE QUESTION
HOUR IN THE GERMAN BUNDESTAG ON JUNE 15/16,
1977 (BUNDESTAG MATTER 8/571)

DEAR COLLEAGUE,

I AM REPLYING TO YOUR QUESTION --

QUOTE DID THE STATE SECRETARY IN THE FEDERAL MINISTRY OF
THE INTERIOR, GUENTER HARTKOPF, WITH HIS STATEMENTS
THAT BERLIN IS 'A FEDERAL LAND OF THE FEDERAL
REPUBLIC OF GERMANY' AND THAT UNDER CONSTITUTIONAL
LAW THE FEDERAL ORGANS ARE BOUND TO TREAT BERLIN
ENTIRELY AS A LAND OF THE FEDERAL REPUBLIC OF
GERMANY TO THE EXTENT THAT THE RESERVATIONS OF THE
WESTERN POWERS ARE NOT AFFECTED, CORRECTLY PRESENT
THE OPINION OF THE FEDERAL GOVERNMENT, AND WILL IN
PARTICULAR THE CABINET MEMBERS INCLUDING THE
FEDERAL CHANCELLOR TAKE THIS POSITION IN THEIR
PUBLIC STATEMENTS? UNQUOTE--

AS FOLLOWS:

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THE STATEMENTS MADE BY STATE SECRETARY DR. HARTKOPF
BEFORE THE BERLIN WORKING GROUP OF THE CURATORIUM
INDIVISIBLE GERMANY IN BERLIN ON MAY 13/14, 1977 TO WHICH
YOU REFER, FOLLOW THE LEGAL POSITION OF THE FEDERAL
CONSTITUTIONAL COURT, WHICH OF COURSE IS BINDING FOR THE
FEDERAL GOVERNMENT. IN THIS RESPECT I REFER FOR
INSTANCE TO THE JUDGMENT OF THE FEDERAL CONSTITUTIONAL
COURT OF JULY 31, 1973, CONCERNING THE (FRG/GDR) BASIC
TREATY IN VOLUME 36 OF THE OFFICIAL COMPILATION (OF
DECISIONS), WHERE ON PAGES 17 AND 32 -- QUOTING FURTHER
RELEVANT DECISIONS BY THAT COURT -- THE FOLLOWING IS
STATED:

"AT THIS TIME THE FEDERAL REPUBLIC CONSISTS
OF THE LAENDER MENTIONED IN ARTICLE 23 OF THE
BASIC LAW, INCLUDING BERLIN; THE STATUS OF LAND
BERLIN OF THE FEDERAL REPUBLIC OF GERMANY IS ONLY
RESTRICTED AND ENCUMBERED BY THE SO-CALLED
RESERVATIONS OF THE GOVERNORS OF THE WESTERN POWERS
(FED. CONST. COURT DECISIONS 7,1 ((7 ET SEQ.)); 19,
377 ((388)); 20, 257 ((266))."

"ALSO AS REGARDS THE FUTURE, THE BASIC LAW OBLIGATES
ALL CONSTITUTIONAL ORGANS OF THE FEDERATION AND THE

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LAENDER TO ENDORSE AND ASSERT THIS LEGAL POSITION
WITHOUT RESTRICTIONS."

THE SUPERIMPOSITION ON GERMAN CONSTITUTIONAL LAW OF
THE RESERVED RIGHTS OF THE THREE POWERS--WHICH WAS REFER-
RED TO BY THE FEDERAL CONSTITUTIONAL COURT AND WAS ALSO
EMPHASIZED BY STATE SECRETARY DR.HARTKOPF IN HIS SPEECH-
CONTINUES TO BE IN FORCE ON THE BASIS OF ART. 2 OF THE
GERMANY TREATY (CONVENTION ON RELATIONS BETWEEN THE
THREE POWERS AND THE FEDERAL REPUBLIC OF GERMANY OF MAY 26,
1952, AS AMENDED OCTOBER 23, 1954. THIS ARTICLE STATES:

"IN VIEW OF THE INTERNATIONAL SITUATION, WHICH HAS
SO FAR PREVENTED THE REUNIFICATION OF GERMANY AND
THE CONCLUSION OF A PEACE SETTLEMENT, THE THREE
POWERS RETAIN THE RIGHTS AND THE RESPONSIBILITIES,
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HERETOFORE EXERCISED OR HELD BY THEM, RELATING TO BERLIN AND TO GERMANY AS A WHOLE, INCLUDING THE REUNIFICATION OF GERMANY AND A PEACE SETTLEMENT."

ACCORDINGLY, THE AMBASSADORS OF THE THREE POWERS BY LETTER OF SEPTEMBER 3, 1971, WITH WHICH THEY FORWARDED THE QUADRIPARTITE AGREEMENT TO THE FEDERAL CHANCELLOR, ADVISED:

"OUR GOVERNMENTS TAKE THIS OCCASION TO STATE, IN EXERCISE OF THE RIGHTS AND RESPONSIBILITIES RELATING TO BERLIN, WHICH THEY RETAINED IN ARTICLE 2 OF THE CONVENTION ON RELATIONS BETWEEN THE THREE POWERS AND THE FEDERAL REPUBLIC OF GERMANY OF 26 MAY 1952 AS AMENDED OCTOBER 23, 1954, THAT PART II(B) AND (D) AND ANNEXES II AND IV OF THE QUADRIPARTITE AGREEMENT CONCERNING THE RELATIONSHIP BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE WESTERN SECTORS OF BERLIN ACCORD WITH THE POSITION IN THE ABOVE-MENTIONED DOCUMENTS, WHICH REMAINS UNCHANGED."

BY LETTER OF SAME DATE THE FEDERAL CHANCELLOR REPLIED TO THIS, STATING INTER ALIA:

"THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY HAS TAKEN COGNIZANCE OF THE CONTENT OF YOUR EXCELLENCY'S LETTER, WHICH WAS TRANSMITTED TO IT IN THE EXERCISE OF THE RIGHTS AND RESPONSIBILITIES RELATING TO BERLIN WHICH WERE RETAINED PURSUANT TO ARTICLE 2 OF THE CONVENTION ON RELATIONS BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE THREE POWERS, OF MAY 26, 1952, AS AMENDED ON OCTOBER 23, LIMITED OFFICIAL USE

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1954, AND WHICH CONTINUE TO BE OBSERVED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY."

THE STATEMENTS MADE BY STATE SECRETARY DR. HARTKOPF ARE ALSO IN ACCORDANCE WITH THE EXPLANATION GIVEN BY THE FEDERAL GOVERNMENT CONCERNING THE QUADRIPARTITE AGREEMENT ON BERLIN, WHICH STATE WITH RESPECT TO THIS QUESTION:

"ALTHOUGH UNDER THE BASIC LAW BERLIN HAS THE LEGAL

STATUS OF A FEDERAL LAND, GERMAN CONSTITUTIONAL
LAW IS OVERLAID WITH THE RESERVATION RIGHTS OF THE
THREE POWERS. UNDER CONSTITUTIONAL LAW, THE
FEDERAL ORGANS ARE BOUND TO TREAT BERLIN AS A
LAND OF THE FEDERAL REPUBLIC OF GERMANY TO THE
EXTENT THAT THE RESERVATIONS OF THE THREE POWERS
DO NOT STAND IN THE WAY." ("THE BERLIN
SETTLEMENT," FEDERAL PRESS OFFICE, DECEMBER 1971,
PAGE 223.)

SINCERELY,

/S/ BAUM

END TEXT
STOESSEL

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